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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,425	02/10/2004	Henry H. T. Tsang	H311055US	2835
28079	7590	08/29/2005	EXAMINER	
GOWLING, LAFLEUR HENDERSON LLP ONE MAIN STREET WEST HAMILTON, ON L8P 4Z5 CANADA			WALCZAK, DAVID J	
		ART UNIT	PAPER NUMBER	3751

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/774,425	TSANG, HENRY H. T.	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 July 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2 and 5-10 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 2 and 7 is/are allowed.
 6) Claim(s) 5,6 and 8-10 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 10 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sound emitting device integral with the crayon (Claim 6) must be shown or the feature canceled from the claim. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1, 3 and 4 are objected to because of the following informalities: These claims have been identified as "withdrawn". It appears, however, that the Applicant intended to cancel these claims (as there has not been a restriction required in this application, claims cannot be considered "withdrawn"). Accordingly, these claims should be identified as "canceled" as opposed to "withdrawn". Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification has not defined a device wherein the crayon is both received in a socket of a sound emitting device (claim 9) and wherein the crayon is not coupled to the sound emitting device (claim 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee. In regard to claims 5, 8 and 9, Lee discloses a set of markers 50 wherein each marker has a marking end, a identifying termination 58 opposite the marking end and a particular physical property (i.e., a color) wherein the marker is releasably coupled to a sound emitting device 10 having a socket 200 and a speaker 100 which cooperates with the identifying termination on each marker to generate an audible message corresponding to the physical property. Although the Lee reference does not disclose that the markers are crayons, the reference does disclose that any suitable writing/marketing device can be used (see paragraph 0023). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that any suitable marking device, including crayons, can be used with the Lee device without effecting the overall operation of the device. In regard to claim 6, when the marker is mounted in the socket 200, the marker is considered to be "integral" with the sound emitting device, i.e., in as much as the Applicant has defined the term "integral" in the specification, the connected marker and socket are considered to be "integral".

Allowable Subject Matter

Claims 2 and 7 are allowed.

Response to Arguments

Applicant's arguments filed 7/19/05 have been fully considered but they are not persuasive. The Applicant contends that the Lee reference is not applicable against the claims in that Lee does not disclose a sounding emitting device having a socket. As discussed supra, however, Lee's sound emitting device 10 clearly includes a socket 200 for receiving the writing instrument. Further, the Applicant contends that the speaker and sound emitting device of Lee are "separate units" and therefore not applicable. However, the single unit 10 (i.e., the sound emitting device) of Lee includes a speaker 100. Accordingly, the claims stand rejected as discussed above. It is lastly noted that the drawings filed 2/10/04 had been accepted as originally filed, but are now objected to for the reasons discussed supra.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
8/25/05